

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

GUARDIAN INDUSTRIES CORP.,

Plaintiff,

v.

**DELL, INC.; GATEWAY, INC.;
HEWLETT-PACKARD COMPANY; ACER INC.;
ACER AMERICA CORPORATION; AOC INTERNATIONAL;
ENVISION PERIPHERALS, INC.; TPV TECHNOLOGY, LTD.;
TPV INTERNATIONAL (USA), INC.;
CHUNGHWA PICTURE TUBES, LTD. a/k/a
CHUNGHWA PICTURE TUBES COMPANY;
TATUNG COMPANY; TATUNG COMPANY OF AMERICA, INC.;
BOE HYDIS TECHNOLOGY COMPANY, LTD.;
BOE HYDIS AMERICA INC.; COMPAL ELECTRONICS, INC.;
HANNSTAR DISPLAY CORPORATION; JEAN CO., LTD.;
LITE-ON TECHNOLOGY CORPORATION;
LITE-ON, INC. a/k/a LITEON TRADING USA, INC.;
MAG TECHNOLOGY COMPANY, LTD.;
MAG TECHNOLOGY USA, INC.;
PROVIEW INTERNATIONAL HOLDINGS, LTD.;
PROVIEW TECHNOLOGY, INC.;
PROVIEW ELECTRONICS COMPANY, LTD.; and
QUANTA DISPLAY, INC.**

Defendants.

C.A. No.: 05-27-SLR

Jury Trial Demanded

**PLAINTIFF GUARDIAN INDUSTRIES CORP.'S
MOTION FOR AN ORDER REQUIRING QUANTA DISPLAY, INC.
TO COMPLY WITH THE SCHEDULING ORDER**

Pursuant to Fed. R. Civ. P. 16(f), Plaintiff Guardian asks the Court to order Defendant Quanta Display, Inc. ("QDI") to comply with the Court's Scheduling Order by immediately identifying all QDI LCD modules that contain Fuji Wide View film, not just those modules that QDI ships directly to the United States. QDI's compliance with the Scheduling Order is necessary for the proper functioning of the staged discovery ordered by the Court, as the OEM and reseller defendants have stated they require this information to complete their Rule 26(a)

disclosures, due August 10, 2005. It would be inefficient and impractical to wait until the first discovery conference on November 17, 2005 to address this matter.

ARGUMENT

1. Guardian asserts that the Defendants infringe four patents covering certain LCD products that use a retardation film such as Fuji Wide View film. Defendant QDI is a manufacturer of LCD modules, some of which contain Fuji Wide View film. QDI sells and ships some of its LCD modules to the U.S., but many of QDI's sales are made overseas to OEMs and resellers, including co-defendants of QDI, which are located outside the U.S. (*See* D.I. 162, Ex. B.) Those OEMs and resellers then sell products containing QDI LCD modules to the U.S., but assert they do not know which of those LCD modules, and thus which of their products, include Fuji Wide View film.

2. To address this information split, the Court ordered staged discovery by the parties. The Scheduling Order required QDI to identify by July 20, 2005, all of its products that include Fuji Wide View film:

By July 20, 2005, or 20 days after their initial response to the Complaint, whichever is later, the LCD module manufacturer defendants shall provide the information required by Fed. R. Civ. P. 26(a)(1) and D. Del. LR 16.2 and identify their products that include Fuji Wide View film.

(D.I. 167 at 2.) This identification is not limited to those products the LCD module manufacturer sold or shipped to the United States—nor would such a limitation make sense in light of the purpose for this identification.

3. At the June 29, 2005 scheduling conference, the OEM and reseller defendants—at least some of whom purchase QDI LCD modules overseas and then sell them into the U.S.—stated that they do not know which of their products contain Fuji Wide View film. (D.I. 144 at 7:19-8:7.) Guardian proposed that “the LCD module manufacturers identify their

modules that have Fuji Wide-View Film in them” to help the OEM and reseller defendants trace those products through the supply chain into their products. (*Id.* at 8:21-9:10.) The Court approved this approach, ordering the LCD module manufacturers “to respond by July 20 with respect to whatever information they have, what modules they manufacture that use this film.” (*Id.* at 10:16-22.) At no time did Guardian or the Court limit the LCD module manufacturers’ disclosures to LCD modules that they themselves sell or ship to the U.S. To do so would undermine the very purpose of these disclosures—to help the OEM and reseller defendants identify which of their products contain Fuji Wide View film, even if they were purchased from LCD module manufacturers such as QDI outside the U.S.

4. QDI’s July 20 initial disclosures identified only “LCD modules containing Fuji Wide View film *that are shipped to the United States.*” (Ex. A at 3 (emphasis added).) On July 25, 2005, Guardian asked QDI to either confirm the LCD modules it identified are all the QDI modules with film, or to supplement its disclosures to list any additional QDI LCD modules containing Fuji Wide View film not previously listed. (Ex. B.) In a series of communications, QDI offered multiple excuses for why it did not comply with the Scheduling Order:

- The Scheduling Order did not require it to identify anything more than it had;
- It did not have the transcript for the scheduling conference; and
- It was “investigating” whether there were any additional LCD modules with Fuji Wide View film that it had not previously identified.

(Ex. C; Ex. D; Ex. E.) During this exchange, Guardian requested QDI comply with the Scheduling Order by August 3, 2005, to avoid the need for a motion. (Ex. F.) QDI did nothing.

5. QDI’s failure to provide the required information in a timely manner not only is a violation of the Scheduling Order, but also undermines the purpose of the staged discovery put in place by the Court. On August 10, 2005, the OEM and reseller defendants are required to

provide their initial disclosures, “given the products identified by Guardian and the LCD module manufacturers.” (D.I. 167 at 2.) Without QDI’s complete identification of LCD modules with Fuji Wide View film, the OEMs and resellers will be unable to make complete identifications of their LCD products with Fuji Wide View film. If QDI is not ordered to provide this information immediately, progress on this basic front will be at a standstill until the November 17, 2005 discovery conference, three and a half months from now.

6. Over two weeks have passed since QDI was obligated under the Scheduling Order to identify all of its LCD modules that contain Fuji Wide View film, and more than 10 days have passed since this deficiency was called to QDI’s attention. “If a party or party’s attorney fails to obey a scheduling or pretrial order ... the judge, upon motion or the judge’s own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney’s fees.” Fed. R. Civ. P. 16(f); *see also* Del. L.R. 1.3. Guardian asks the Court to order QDI to comply with the Scheduling Order by identifying all of its LCD modules that contain Fuji Wide View film. Because there is no plausible explanation for QDI’s noncompliance with the Scheduling Order, Guardian also requests that QDI be ordered to pay its reasonable attorney’s fees and expenses incurred in compelling this information from QDI.

CONCLUSION

For the foregoing reasons, Guardian requests that the Court order QDI to comply with the Scheduling Order and identify all of its LCD modules that contain Fuji Wide View film immediately, and requests its fees and costs in pursuing this relief

Dated: August 5, 2005

/s/ Richard K. Herrmann

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QUANTA DISPLAY, INC.

Defendants.

C.A. No.: 05-27-SLR

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GUARDIAN'S RULE 7.1.1 CERTIFICATION FOR ITS MOTION
FOR AN ORDER REQUIRING QUANTA DISPLAY, INC.
TO COMPLY WITH THE SCHEDULING ORDER

Counsel for Plaintiff Guardian Industries Corp. hereby certifies that opposing counsel was contacted in an effort to resolve this issue to no avail.

/s/ Richard K. Herrmann
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ORDER

The Court having considered Plaintiff Guardian Industries Corp.'s Motion for an Order Requiring Defendant Quanta Display, Inc. to Comply with the Scheduling Order, and the parties' arguments in support and opposition thereof,

IT IS HEREBY ORDERED this ____ day of _____, 2005 that the motion is GRANTED.

Sue L. Robinson, J.

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of August, 2005, I electronically filed the foregoing document, **PLAINTIFF GUARDIAN INDUSTRIES CORP.'S MOTION FOR AN ORDER REQUIRING QUANTA DISPLAY, INC. TO COMPLY WITH THE SCHEDULING ORDER**, with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

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Additionally, I hereby certify that on the 5th day of August, 2005, the foregoing document was served via email on the following non-registered participants:

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